Before the Federal Communications Commission
Washington, DC 20554

In the Matter of:	)	
	)	
Schools and Libraries Universal	)	CC Docket No. 02-6
Service Support Mechanism	)	

COMMENTS OF
LIBRARY VIDEO COMPANY IN RESPONSE
TO THE PROPOSED FY2009 E-RATE ELIGIBLE SERVICES LIST

Library Video Company ("LVC") hereby submits these Comments in response to the Federal Communications Commission's ("FCC" or "Commission") July 31, 2008 Public Notice in the above-referenced proceeding, seeking comments on the Universal Service Administrative Company's ("USAC") proposed Eligible Services List ("ESL") for Funding Year 2009. At issue is whether the proposed services are eligible under the Commission's current rules.[1]

Library Video Company is a leading distributor of educational VHS, DVD, and digitally-delivered media to K-12 schools nationwide. The SAFARI Montage® suite of products includes award-winning digital media management solutions for school districts and the finest educational video programs and titles available. Since 1985, LVC has been committed to providing quality services to schools, setting the standard for professional customer service and offering outstanding value to students, teachers, librarians and other educators committed to ensuring that all of the nation's children receive a quality education.

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[1] Public Notice at 1, CC Docket No. 02-6, FCC 08-180 (rel. July 31, 2008) (hereafter "Public Notice").

I. The Proposed Exclusion

The Public Notice requests public comment on the proposed changes to the ESL for the 2009 Funding Year. One of the proposed changes is to deem Video On-Demand servers to be ineligible for E-Rate discounts. Library Video Company respectfully requests that the Commission reject this change. LVC believes that eliminating funding for Video On-Demand servers (or systems)[2] is inconsistent with the public interest and contravenes existing Commission public policy determinations. In addition, LVC believes that the FCC's rules require Video On-Demand servers (or systems) to be funded by USAC. Further, the proposed change does not provide sufficient information as required by the Administrative Procedure Act, 5 U.S.C. § 500 et seq. and the Commission's rules, 47 CFR § 54.522.

II. Public Policy Requires E-Rate Funding to Be Supplied for Video On-Demand Servers

The E-Rate program has been instrumental in minimizing the digital divide for tens of thousands of schools and tens of millions of less affluent students. It has done so by providing network bandwidth and connections, which allow data and content to stream seamlessly from point to point or point to mutltipoint, thereby diminishing geographic barriers to learning. Providing functional bandwidth to poor and urban schools is at the core of the mission of The Schools and Libraries Program of the Universal Service Fund ("SLD"). Indeed, the SLD makes discounts available to eligible

[2] Since the FCC did not define the term Video On-Demand servers, LVC is not certain the about the breadth of the term and it may well apply to all elements of a Video On-Demand system, which is a core LVC offering to schools and school districts throughout the nation.

schools and libraries through a program that "is intended to ensure that schools and libraries have access to affordable telecommunications and information services."[3]

Video streaming is a core and necessary component of distance learning, which is an eligible service.[4] Educational video (which may be video that is pre-loaded and stored or created and provided by the school or acquired by other means) is but one form of distance learning and is an educational imperative in every K-12 classroom. It has been proven to engage 21st Century students and increase their retention. Educational video (stored or otherwise) can be streamed to schools via the internet and to classrooms over a school's WAN or LAN from a central server. Placing servers locally saves schools, school districts and, ultimately, taxpayers money by keeping their internet bandwidth free for other vital uses. Video On-Demand servers enable true digital media management and a complete digital curriculum eliminating the need for costly hard copy. (This is the reason the FCC has previously concluded that web hosting services are eligible for compensation, ***including the storage of applicant provided content.***)

Denying Video On-Demand servers for E-Rate eligibility would have the exact opposite effect on the public and the nation's education system that the fund was designed to accomplish. Poorer schools and school districts would be forced to stream video over expensive internet connections; thereby causing them to spend more money on increased bandwidth. Video servers are essential tools for transport of data over a WAN or LAN. Accordingly, Video On-Demand servers must remain eligible for E-Rate funding.

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[3] USAC Web site, 12 August 2008.

[4] Notice of Proposed Rulemaking, In the Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6 (rel. July 31, 2008) at para. 22. ("NPRM").

III. FCC's Rules Require Video On-Demand Servers to Be Funded by USAC

FCC rules make clear that funds are available to eligible schools in four (4) categories of service, including Internal Connections. The Commission has determined that Internal Connections consist of the equipment that expand data access within a school, such as to individual classrooms. The FCC has acknowledged, and repeatedly affirmed, that components, which are essential elements in the transmission of information within a school, are eligible for E-Rate funds.[5] Therefore, video servers, which are critical to deliver information within a school and/or school district must be eligible for funding. Indeed, the Commission affirmed this in the eligibility list for so-called "Internal Connections." *See* Public Notice (at pages 10-15). Therein "servers" and related equipment are identified (at page 13) as being eligible (to the extent that they are used as "necessary to transport information all the way to individual classrooms or public areas of a library").[6] In short, video servers, if used for eligible purposes, are themselves eligible under the Commission's existing rules.

IV. The Proposed Exclusion Does Not Effectively Define Video On-Demand Servers And Should be Rejected

The proposed exclusion fails to describe what constitutes Video On-Demand servers and is, therefore, unlawful. The glossary provided with the Public Notice defines

[5] The standard concerning the transmission of data reflects the Commission's stated perspective that distance learning is both eligible and in the public interest. *See* NPRM at 22. While the Commission's definition of "distance learning" is subject to interpretation, it must include the process by which information flows from various points to educate students. Accordingly, Video On-Demand systems, which educate students by supplying data from various sources is in the public interest and, therefore, eligible for funding.

[6] *See also*, definition of eligible "Storage Devices" and "Video Components." In contrast, identified as ineligible are certain fairly narrowly defined equipment such as end user video equipment and broadcast and cable television equipment used for display or distribution of broadcast and cable television services (*see* pages 17-18 of the proposed eligibility list).

"Video On Demand server" simply as a "server [that] stores videos which are available for retrieval at any given time." Today, it is well understood that every computer can act as a server that stores video and, therefore, the Public Notice fails to provide any effective definition for what is being excluded, or why. There is simply no commonly accepted meaning of "Video On-Demand" servers. Accordingly, neither commercial providers (such as LVC) nor schools can discern what the FCC is proposing to render ineligible. Similarly, vendors and schools cannot determine what related equipment or services would also be considered eligible or ineligible. The Public Notice does not provide any additional insight into the Commission's definition of Video On-Demand servers or what it encompasses. The Public Notice merely states that it seeks a "clarification that Video On-Demand servers are not eligible for discounts." It does not contain any explanation, description or policy considerations. Similarly, the National Exchange Carrier Association (NECA) and the FCC have not specified any policy reason why all or some subset of video servers or related transmission equipment used for education would be deemed ineligible.[7] In short, no reasoned decision is provided for why, or under what condition, specific servers would be excluded from eligibility.

By not defining the category or the circumstances under which certain equipment will be excluded, schools and libraries are put in the untenable position of simply guessing what equipment will or will not be deemed eligible for compensation.[8] If they

[7] Representatives of LVC have had a variety of discussions with FCC and/or NECA staff on this topic. Those discussions have shed interesting and occasionally inconsistent light, as individuals have voiced their own interpretations as to the nature of the Video On-Demand exclusion. Such interpretations are obviously not binding upon the FCC or NECA, and cannot be relied upon by LVC, schools or libraries, which is what has prompted these comments.

[8] Anecdotally, and by way of illustration, we understand that over the past several years the FCC and NECA have deemed Cisco's Content Networking Devices (which are a family of products

guess wrong, they will be forced to bear the economic burden, which will be passed onto taxpayers. This kind of "guess what we mean" funding process is inconsistent with due process and with the Administrative Procedure Act and cannot be lawfully adopted by the Commission. It is equally inconsistent with Section 54.522 of the Commission's rules (47 CFR § 54.522) which requires the USAC Administrator to issue each year a draft list of services eligible for support.

In addition, it appears that the exclusion is absolute: any equipment which is capable of storing video may be rendered ineligible for compensation. Clearly, this would be inconsistent with the cost allocation rules that apply to servers generally (*see* Public Notice at 13, at discussion of servers and page 7 for a discussion of web hosting). To avoid conflicts between the different eligibility rules, at a minimum, the Commission must modify the exclusion to include cost allocation rules. Modifying the exclusion would be necessary to ensure that the rule is applied uniformly. (It would also avoid the harm of having different reviewers "pick and choose" which rule applies in a given instance).

The lack of a clear definition, coupled with the likely conflict between rules, requires the Commission to at least clarify the scope of the term "Video On-Demand" servers.

V. LVC Requests a Remedy

Since the public has not been fully apprised of the Commission's current intentions, they cannot reasonably comment. LVC respectfully requests the Commission

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which route, switch and deliver voice, video and data content), eligible for reimbursement. To the extent that Cisco's CND products (or its successors), route, switch and deliver video, such products appear to be a Video On-Demand device. We do not believe that it was the Commission's intention to change its rules by overturning eligibility decisions such as have been made in the CND context.

to remedy this problem by issuing another Public Notice (or order) in which it identifies what is meant by "Video On-Demand server," and specifies the functions or functionalities that render the specified equipment ineligible or subject to appropriate cost-allocation rules. Otherwise, the Commission must strike the tentative conclusion that all Video On-Demand services are ineligible.

Conclusion

For the foregoing reasons, the Commission cannot, at this stage in the process, lawfully conclude that "Video On-Demand servers" can be determined to be ineligible for E-Rate funding. The Commission should issue a Public Notice or order which clearly defines the Commission's intentions with regard to Video On-Demand servers in detail and provides the public with sufficient information upon which to form an opinion and advise the Commission. Otherwise, the Commission should strike its tentative conclusion regarding Video On-Demand servers.

Respectfully submitted,
Library Video Company

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